

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)	
)	
Establishment of Rules and)	IB Docket No. <u>95-91</u>
Policies for the Digital)	GEN Docket No. 90-357
Audio Radio Satellite Service)	RM No. 8610
in the 2310-2360 MHz)	
Frequency Band)	

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COMMENTS OF OFFICE OF COMMUNICATION
THE UNITED CHURCH OF CHRIST, ET AL.

Henry Geller
Suite 800
1750 K Street, N.W.
Washington, D.C. 20006
202-429-7360

Dr. Everett Parker
Senior Research Associate
Fordham University
The Bronx, New York 10458

September 15, 1995

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SUMMARY

We strongly favor the earliest possible development of a satellite digital audio system (DARS). Such a system will markedly serve the public interest by contributing to diversity of programming material and sources, so important to the First Amendment. Because it is a satellite service and thus has such great reach, it is in position uniquely to serve minority, ethnic and cultural interests that otherwise might not receive programming directed to such a narrow audience in any particular community. Rural areas would receive the same quantity and quality of programming as the large urban centers.

Any detriments are speculative. It cannot be said that the satellite operation will undermine or wreck the local terrestrial broadcast system. That system is well entrenched, geared to providing local information, and strongly supported by advertising. It also can turn to digital audio broadcasting, and indeed may be spurred to do so by the advent of the satellite operation.

The progress embodied in satellite DARS should not be blocked by protectionism for the existing system. Established policy in television, where there is open entry for cable, DBS, MMDS, LMDS, etc., is equally applicable here. Whether satellite DARS succeeds or fails should be left to the consumer, rather than blocked or improperly slowed down by the Government to protect existing terrestrial broadcasters. There has been too long a delay (five years), which has already subjected the Commission to criticism.

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The commentators, Office of Communication of the United Church of Christ, Henry Geller, Dr. Everett Parker, Peggy Charren, the New York Conference of the United Church of Christ, and Black Citizens for a Fair Media, are disinterested, non-profit organizations or persons who are dedicated to promoting the public interest in the "larger and more effective use of radio" (Section 303(g) of the Communications Act of 1934), with special emphasis on diversity and diversification of programming and programming sources, including for minority, ethnic and cultural groups. Because of this interest, we filed to support the earliest possible development of satellite DARS on January 29, 1993 in response to the Notice in GEN Docket No. 90-357. We file brief comments here in response to the Notice issued June 15, 1995.

In our previous comments, we stressed the substantial benefits that satellite DARS could bring to the listening public in rural areas not now served at all or adequately by terrestrial radio or by targetting niche audiences that have not been served by existing

radio outlets but could be served as an aggregate national audience.¹ In short, the satellite service is a platform with national reach for programming formats that cannot now be foretold -- the entrepreneur and consumer, by trial and error in the market, will determine the range of such formats. It thus has the potential, if successful, to contribute markedly to diversity of programming and diversification of programming sources, so important to the public interest and the First Amendment.

The argument that satellite DARS service will wreck or undermine the terrestrial service is purely speculative, in light of the latter being well entrenched, strongly supported by advertising, and having the marked advantage of material of unique local interest, such as local newscasts, traffic information, local weather, PSAs, etc. In any event, satellite DARS should not be held back to protect the existing terrestrial service in light of the clear Congressional and Commission policy of open entry in broadcasting. That policy is crystal clear in television broadcasting², and it would make no sense to adopt an open entry policy for new technology and services in the television area, but a restrictive, protective one in the radio arena. Further, the

¹ Thus, the Notice (at par. 2) states that "[s]uch specialized program offerings could include foreign language programming, music formats not usually carried by radio broadcasts, and programming geared to children or senior citizens."

² See Cable Television Consumer Protection and Competitive Act of 1992, Sec. 355; NAB v. FCC, 740 F.2d 1190 (D.C. Cir. 1984). Under that policy, the Commission has promoted the entry of cable, DBS, MMDS, MLDS, OFS, etc.

plain fact is that in the coming digital era, "bits are bits," and there can be no distinction between television and radio in this respect.

We would add one final observation. The FCC has been subject to considerable criticism recently on the ground that "[d]elay through regulatory gaming is still the order of the day", with entrenched industry segments using the FCC's processes to hold back new competing services. See, e.g., *The Telecom Revolution*, the Progress and Freedom Foundation, May 1995, at 10. Indeed, this area is cited as an example ("...it is the broadcasters that oppose satellite-delivered radio services" -- *id.* at 11). The satellite DARS issue has been pending before the Commission for five years. Surely it is time to move forward expeditiously.

Respectfully submitted,



Henry Geller
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for Dr. Everett Parker
Senior Research Associate
Fordham University
The Bronx, New York 10458

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